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June 30, 2003

Hon. Maura D. Corrigan
Michigan Supreme Court
3034 West Grand Blvd. #8-500
Detroit, MI 48202

Re: ADM 2003-22:10, Shared Economic Responsibility,
52 Overnights and Cubing

Dear Chief Justice Corrigan:

As a non-custodial parent, I am submitting the following commentary regarding ADM 2003-22: 10 Shared Economic Responsibility, 52 Overnights and Cubing.

In a public hearing before the Michigan Supreme Court held June 19, 2003, Mr. Hanley Gurwin submitted a proposal to radically alter the child support calculation rules by eliminating Shared Economic Responsibility entirely in favor of a child support assessment based exclusively upon the incomes of the parties and unrelated to parenting time and/or its associated costs. Mr. Gurwin's proposal deserves careful evaluation because of the interest it created on the court and the multiple fallacies and other problems contained in his reasoning.

One of Mr. Gurwin's premises is that the present system of Shared Economic Responsibility is flawed because its steep drop in support amounts at the Shared Economic Responsibility Formula threshold, which creates an economic disincentive for the custodial parent to grant additional parenting time to the non-custodial parent, and results in excessive litigation.

Mr. Gurwin implies that, because of the threshold and steep drop in support, a feature idiosyncratic to the present rule, *all* shared economic responsibility formulae are flawed. This is a fallacy of Misrepresentative Generalization: a generalization made on the basis of data that are not typical or fairly representative of the general population. Mr. Gurwin offers no evidence that the proposed Shared Economic Responsibility, 52 Overnights and Cubing, which lowers the threshold and reduces the drop in support, would perpetuate the same problems of the present rule.

Mr. Gurwin's conclusion is that, because of problems with the present rule, not only should the new rule not be adopted, instead the entire concept of Shared Economic Responsibility should be abandoned. This is a fallacy of Limited Options or a False

Dilemma: it unfairly offers fewer options than may actually be present. The obvious overlooked solution is the proposed Shared Economic Responsibility, 52 Overnights and Cubing.

Mr. Gurwin's solution is child support calculation based solely upon the income of the non-custodial parent and the number of children, and payable to the custodial parent. It fails to recognize the monetary contributions made out-of-pocket by the non-custodial parent toward the upkeep of the children. It also disregards the intent of the law, which arguably is to compel both parents to share in the expenses of raising a child.

Mr. Gurwin testified that the out-of-pocket expenses associated with an overnight visit were insignificant, and in effect, that there were no incremental costs for the non-custodial parent. This argument is a gross oversimplification and fails miserably, when considering that 'non-custodial parents' with shared parenting time could have the children for more than 3,000 days before the child reaches the age of 18. The Gurwin solution would affect a double tax (out-of-pocket expenses and full child support) on non-custodial parents with significant parenting time. His solution is inequitable and unjust.

Other testimony offered by Mr. Gurwin in response to questions from the Justices is also indicative of problems in reasoning. When asked how he would calculate the amount of support under his 'income only' proposal, Mr. Gurwin claimed that he didn't understand how the present system calculates the amounts and prefers it to be a 'black box' in which he can simply input the income of the parents and have some number appear as a result.

This was a non-answer to a critical question. How could child support be calculated under Mr. Gurwin's proposed solution, in a manner that would be equitable to both parents, just, and consistent with the intent of the law? Many significant decisions would have to be made and adopted by the Supreme Court before the algorithms could be developed to populate a 'black box.' For example: how would this 'black box' even formulaically determine who the 'custodial' parent is in cases of shared custody – the parent who has 183 days vs. the parent with 182? Would the law tolerate a 'winner take all' process, by which the parent with one additional day of parenting time prevails? This neat and tidy 'black box' that Mr. Gurwin proposes has the potential of very quickly becoming a Pandora's box.

In further testimony, Mr. Gurwin offered: "If you are going to reduce the number of days, don't go below 105."

Hon. Maura D. Corrigan
June 30, 2003
Page 3

What is the significance of 105 days? Is it that 105 days is one day more than the 104 days most non-custodial parents receive in shared parenting time? If so, this would arbitrarily create a barrier to entry, which would eliminate the majority of non-custodial parents from participating in Shared Economic Responsibility. It would simply perpetuate the same problems inherent in the 128-day barrier of the present rule. It would solve nothing. Moreover, it would mean that non-custodial parents could have their children for more than 1,800 days, during which time they pay both out-of-pocket expenses and the full amount of child support.

In summary, the present system of Shared Economic Responsibility has problems that need to be addressed. However, the solution proposed by Mr. Gurwin is inequitable, unjust, and inconsistent with the intent of the law. It is fatally flawed. The proposed rule for Shared Economic Responsibility, 52 Overnights and Cubing corrects the problems of the present law while providing a more equitable and just result, and should be adopted by the Court.

Very truly yours,

A handwritten signature in black ink, appearing to read "Clinton R. Andrews". The signature is fluid and cursive, with the first name "Clinton" being more prominent and the last name "Andrews" following in a similar style.

Clinton R. Andrews